

1986

The State of Utah v. William Jay Robbins : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David L. Wilkinson; Attorney General; Sandra L. Sjogren.

William Jay Robbins; pro se.

Recommended Citation

Brief of Respondent, *The State of Utah v. William Jay Robbins*, No. 860201.00 (Utah Supreme Court, 1986).
https://digitalcommons.law.byu.edu/byu_sc1/1082

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, ³⁰DOCKET NO 860201

Plaintiff-Respondent, : Case No. 860201
-v- :
WILLIAM JAY ROBBINS, :
Defendant-Appellant. :

BRIEF OF RESPONDENT

APPEAL FROM DENIAL OF A MOTION FOR CORRECTION OF
SENTENCING ERROR IN THE SECOND JUDICIAL DISTRICT COURT, IN AND
FOR DAVIS COUNTY, STATE OF UTAH, THE HONORABLE DOUGLAS L.
CORNABY, PRESIDING.

DAVID L. WILKINSON
Attorney General
SANDRA L. SJOGREN
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

WILLIAM JAY ROBBINS
P.O. Box 250
Draper, Utah 84020

Appellant, pro se

FILED
DEC 8 1986

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	Case No. 860201
-v-	:	
WILLIAM JAY ROBBINS,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

APPEAL FROM DENIAL OF A MOTION FOR CORRECTION OF
SENTENCING ERROR IN THE SECOND JUDICIAL DISTRICT COURT, IN AND
FOR DAVIS COUNTY, STATE OF UTAH, THE HONORABLE DOUGLAS L.
CORNABY, PRESIDING.

DAVID L. WILKINSON
Attorney General
SANDRA L. SJOGREN
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

WILLIAM JAY ROBBINS
P.O. Box 250
Draper, Utah 84020

Appellant, pro se

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	i
STATEMENT OF ISSUES	i
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENTS	2
ARGUMENT	
POINT I - DEFENDANT IS NOT ENTITLED TO RESENTENCING AND THIS COURT'S PRIOR DECISION ON THIS MATTER IS RES JUDICATA.. . . .	2
CONCLUSION	3

TABLE OF AUTHORITIES
CASES CITED

<u>Robbins v. Cook</u> , 45 Utah Adv. Rep. 12 (Oct. 30, 1986).	1, 2
<u>State v. Schreuder</u> , 712 P.2d 264 (Utah 1985)	3
<u>State v. Steggell</u> , 660 P.2d 252 (Utah 1983).	2
<u>State v. Robbins</u> , 709 P.2d 771 (Utah 1985)	1

STATUTES CITED

Utah Code Ann. §76-5-404.1 (Cum. Supp. 1986)	3
--	---

STATEMENT OF ISSUES

1. Is appellant entitled to reduction of his sentence from a first to a second-degree felony sentence?

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
Plaintiff-Respondent, : Case No. 860201
-v- :
WILLIAM JAY ROBBINS, :
Defendant-Appellant. :

BRIEF OF RESPONDENT
- - - - -

STATEMENT OF THE CASE

Defendant was convicted of sexual abuse of a child with aggravation and was sentenced to a term of five years to life with a minimum mandatory term of three years. Defendant appealed and his conviction was affirmed in State v. Robbins, 709 P.2d 771 (Utah 1985). Defendant filed a habeas corpus petition which was denied and was affirmed in Robbins v. Cook, 45 Utah Adv. Rep. 12 (Oct. 30, 1986).

Defendant also filed a motion in the trial court for correction of a sentencing error on February 11, 1986. Judge Cornaby denied the motion on March 27, 1986. Defendant now appeals the denial of that motion.

SUMMARY OF ARGUMENT

Defendant is not entitled to reduction of his sentence for the reasons stated by this Court in its previous ruling on the issue. Defendant's claim of double punishment was not raised in the lower court and cannot be considered on appeal.

ARGUMENT

POINT I

DEFENDANT IS NOT ENTITLED TO RESENTENCING
AND THIS COURT'S PRIOR DECISION ON THIS
MATTER IS RES JUDICATA.

Defendant moved for correction of a sentencing error in the trial court on March 27, 1986 (R.10-14). After response by the county attorney's office (R.1-4), Judge Cornaby denied defendant's motion by written order (R.17-19). Defendant claimed he should have been resentenced for a second-degree felony after the legislature changed sexual abuse of a child without aggravating circumstances from a first to a second-degree felony. On appeal, defendant claims that aggravation of sexual abuse by use of a prior conviction is unconstitutional because it imposes double punishment for his prior crime and that he was entitled to a reduction in his sentence due to the legislative change.

First, defendant's claim of unconstitutionality is raised for the first time in this appeal and was not an issue upon which Judge Cornaby ruled. Thus, defendant may not raise this claim as a basis for reversal of Judge Cornaby's ruling. State v. Steggell, 660 P.2d 252 (Utah 1983) (Court will not consider issues raised for first time on appeal).

Furthermore, this Court has previously ruled in Robbins v. Cook, 45 Utah Adv. Rep. 12 (Oct. 30, 1986), that defendant is not entitled to a reduction of sentence due to the legislative change in Utah Code Ann. §76-5-404.1 (Cum. Supp. 1986). This Court's prior decision is res judicata on this issue and defendant is, therefore, not entitled to reversal of the lower court's order. State v. Schreuder, 712 P.2d 264, (Utah 1986).

CONCLUSION

Based upon the foregoing, the State requests this Court to affirm Judge Cornaby's order.

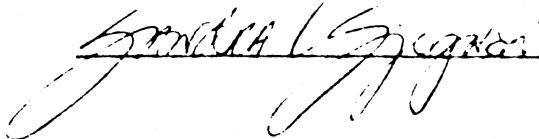
DATED this 8th day of December, 1986.

DAVID L. WILKINSON
Attorney General


SANDRA L. SJOGREN
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and exact copy of the foregoing Brief, postage prepaid, to William Jay Robbins, P.O. Box 250, Draper Utah 84020 this 8th day of December, 1986.


SANDRA L. SJOGREN